IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14356 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAGUJART MEDICAL SOCIETY

Versus

DEPUTY LABOUR COMMISSIONER

Appearance:

1. Special Civil Application No. 14356 of 2003

MR MURALI N DEVNANI for Petitioner No. 1

MR AMBALAL F PATEL for Petitioner No. 1

Mr.Mengdey, Asst.GOVERNMENT PLEADER for Respondent No. 1

MR BHARAT SHAH for Respondent No. 2

MR KG SHETH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 01/04/2004

ORAL JUDGEMENT

Rule. Mr.Mengdey, Ld.AGP waives service of rule on behalf of respondent No.1. Mr.Sheth waives service of rule on behalf of respondent No.2. With the consent of learned advocates for the parties matter is taken up for final hearing today.

2. The only question arises in this petition is : Whether the delay be condoned and appeal be heard on merits or not?

3. The short facts of the case are that the petitioner is a charitable institution running hospital for which grant is being provided by the State Govt as per the contention of the petitioner. It is also the case of the petitioner that it is maintaining itself on the basis of donations received from the public at large. The respondent No.2 was in employment and she retired from service on 31.3.1999 and the amount of gratuity was not paid. Therefore, the respondent No.2 preferred Application No.4/02 before the controlling authority under Payment of Gratuity Act, 1971 (hereinafter referred to as "the Act"). It appears that the matter proceeded exparte before the controlling authority and the controlling authority ordered for payment of Rs.55,575/towards gratuity to the respondent No.2. The petitioner carried the matter before the appellate authority by way of filing Appeal No.2/03 and in the said appeal, application for condonation of delay was submitted. However, the appellate authority ultimately passed the order on 30.6.03 whereby the delay is not condoned. Under the circumstances, the present petition.

4. I have heard Mr.Devnani for the petitioner, Mr.Mengdey for the respondent No.1 and Mr.Sheth for respondent No.2. It is well settled that normally the application for condonation of delay should be leniently viewed, more particularly, when the delay is not for a longer period. In the present case the appeal came to be preferred after a period of 60 days and the ground shown is of administrative reasons. Further, it is the case of the petitioner that since the grant is being provided by the State Govt to the administration of the hospital, even if the gratuity is to be paid, the burden will have to be borne by the State Govt. In my view, even if this contention may not be finally accepted but it makes out an arguable case, the case to be considered on merits in the appeal, more particularly, because before the controlling authority, the matter proceeded exparte. As such, the petitioner could not avail of the opportunity to purforward his case either before the controlling authority or before the appellate authority so far as the merits of defence is concerned. Therefore considering the peculiar facts and circumstances of the case I find that if the delay is condoned and the appeal is decided on merits, the same would meet with the ends of justice. However, at the same time, opportunity was given to the petitioner and the petitioner has not availed of the same

and therefore if such default is viewed leniently, it would encourage dilatory tactics on the part of the litigant and therefore even if the delay is condoned the petitioner should pay reasonable costs by way of compensation for causing default in not properly defending the proceedings. Mr.Devnani for the petitioner has left the matter to the court for such purpose. As such, when the notice came to be issued by this court on 3.10.03 this court had ordered to deposit amount of Rs.3,500/- and Mr.Devnani states that the said amount is already deposited. Considering the facts and circumstances of the case and more particularly keeping in view that the total amount of gratuity is of Rs.55,000/- I find that reasonable costs by way of compensation will be Rs.5,000/- and therefore the petitioner should further be directed to deposit an amount of Rs.1500/- towards costs in addition to amount of Rs.3500/- already deposited. The aforesaid amount be deposited with this court.

5. In view of the aforesaid, the order, dated 30.6.03 passed by the appellate authority in Gratuity Appeal No.2/03 is quashed and set aside on condition that the petitioner deposits a sum of Rs.1500/- in addition to the amount of Rs.3500/- already deposited within a period of one week from today. The respondent No.2 shall be at liberty to withdraw the said amount of Rs.5,000/- and office should pay the said amount by A/C payee cheque to respondent No.2 as and when such request is made.

Gratuity Appeal No.2/03 under Payment of Gratuity Act, 1972 is restored to file of the appellate authority at Vadodara and the appellate authority is further directed to consider the appeal on merits after giving opportunity of hearing to both sides and shall render the decision as early as possible, preferably within a period of three months from the date of receipt of writ of this court.

Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

1.4.04 (JAYANT PATEL,J)